



Written by [Jack Kenny](#) on March 4, 2015

State Lawmakers Pushing Back Against Federal Overreach

The issue of federal government overreach is often talked about in 21st-century America, but some state legislators are actually doing something about it. Recently [The Hill reported that](#) more than 200 bills have been introduced in state capitols across the country to nullify federal laws or regulations that the bills' sponsors claim violate the Constitution of the United States.



“You have a choice,” Diane St. Onge, a Republican state representative in Kentucky, told *The Hill*. “To sit back and not do anything or say anything and let overregulation continue — or you have the alternative choice to speak up about it and say, ‘We know what you are doing or intend to do and we do not think that it is constitutional and we as a state are not going to stand for it.’ ”

St. Onge has introduced H.B. 13 to nullify federal gun control laws within Kentucky. Similar legislation has been introduced in seven other states, *The Hill* reported. “This law is saying the sheriff and those under him do not have to follow federal regulations,” St. Onge said. Other bills awaiting action in state capitols declare void within their respective state lines federal legislation dealing with the production of hemp and experimental medical treatments. West Virginia, for example, is one of 20 states where legislation has been introduced to allow terminally ill patients access to drugs not approved by the Food and Drug Administration. The list of other states considering the same or similar legislation includes Oregon, California, Utah, Texas, Virginia, New Jersey, Rhode Island, New Hampshire, Maine, Indiana, and Tennessee.

Florida has a bill to legalize and regulate the production of hemp, an effort that has yet to receive the support needed for passage in Congress. “All politics is local,” said state Representative Rehwinkel Vasilinda, the Democrat who introduced the bill. “We have the authority to solve our own problems at the state and local levels — that’s what is great about the United States.”

The Constitution of the United States contains a “supremacy clause,” declaring in Article VI:

The Constitution and the Laws of the United States which shall be made in pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

But the 10th Amendment, the last article of the Bill of Rights that was ratified just a few years after the adoption of the original Constitution, says:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or the to the people.

So who decides when a federal law or regulation exceeds the powers “delegated to the United States by the Constitution” and trespasses on those “reserved to the States”? Most Americans today might say the Supreme Court. But the Supreme Court and other U.S. courts are part of the federal government. And it violates a basic principle of simple justice to have one of the parties in a dispute be the sole judge of its own case. In disputes between the federal government and a state or states, judges in federal



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courts, whose appointments and promotions depend on the president and the Congress, are not disinterested parties. And since the powers delegated to the United States are, in our federal system, delegated by the states, why not, defenders of states rights have argued for more than two centuries, let the states, each in its own jurisdiction, decide when the federal government has exceeded its constitutionally delegated authority?

With the federal government today mandating everything from the purchase of health insurance to the type of light bulbs we may buy, sentiment for state resistance is growing, said Mike Maharrey, spokesman for the Los Angeles-based Tenth Amendment Center.

“People are becoming more and more concerned about the overreach of the federal government,” Maharrey told *The Hill*. “They feel the federal government is trying to do too much, it’s too big and it’s getting more and more in debt.” States rights advocates argue that state officials may refuse to cooperate with federal law enforcement, as many did in the 19th century by refusing to obey the Fugitive Slave Act. “States were always intended to be a check on federal power,” Maharrey said.

Some states are pushing for an Article V convention to rein in federal power. Though it has never been used, it is one way of amending the Constitution, as spelled out in Article V. Under that article, Congress can approve a convention of two-thirds of the states. Any amendment proposed to become part of the Constitution by such a convention would then have to be ratified by three-fourths of the states — unless, as happened at our original constitutional convention of 1787, such a convention changes the process whereby new amendments are ratified. Thirty-four states are needed to call a constitutional convention. Any proposed amendment would now require ratification by 38 states.

There is presently a major push happening to call an Article V convention. “The citizens of this country believe Washington, D.C. has exceeded its boundaries,” Mark Meckler, president of Citizens for Self-Government told *The Hill*. “Article V is the only method available to us to push back.”

Former Senator Tom Coburn of Oklahoma, a conservative Republican and frequent critic of federal overreach, recently issued a statement announcing he will join as a senior advisor to the Convention of States Project, another group pushing for a constitutional convention. “Our Founders anticipated the federal government might get out of control at some point, and they gave us a Constitutional mechanism to rein it in,” Coburn said. “Many in Washington have unfortunately forgotten they work for the American people, and the people have begun to mobilize in this effective effort from coast to coast.”

But good intentions notwithstanding, other conservatives have long opposed the convention approach, fearing that a runaway convention might propose even greater powers for the federal government, or a scrapping of the Constitution altogether in favor of a more liberal or “progressive” charter without the limitations on the federal government or the freedoms of religion, speech, property rights, and other liberties guaranteed in the Bill of Rights. Indeed, the Constitution itself was adopted when delegates, called together to amend the Articles of Confederation, proposed instead an entirely new Constitution. While that document has, for the most part, served the country well for more than two centuries, today’s political climate might be less favorable to liberty and more hospitable to an all-powerful government, promising more benefits to more constituencies in the name of “social justice.” Writing for [The New American](#), attorney Joe Wolverton noted those promoting an Article V convention include leftist billionaire George Soros and “numerous extremely radical, progressive and socialist organizations that otherwise would have little in common with the conservatives fighting on the same side.”



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Even if the entire convention were not subverted to install a more powerful government and it were to, in fact, propose amendments championed by conservatives, the intent of the amendments could be turned on their heads, having the opposite effect of what was planned, [warned A. Barton Hinkle](#) at Reason.com. “For instance,” wrote Hinkle, “conservatives seem to assume a balanced-budget amendment would require Washington to cut spending. In fact, given the choice between sharply higher taxes or sharply reduced government benefits, the public might opt for the former. It also might opt for vastly higher taxes to support a war of national survival, or perhaps even a war of convenience, if persuaded to by a sufficiently charismatic leader.”

Or Congress might opt for such things, even if the public doesn't. If freedom is to be preserved in America, it will require a greater understanding and respect for the Constitution, which limits the powers of a federal government that exists to defend freedom, not “government benefits,” and will go to war to defend the nation and its people when attacked, and not for the sake of convenience, or to satisfy the ambition of a “charismatic leader.” That is the Constitution our representatives and senators are reelected to uphold. It requires an enlightened and engaged citizenry to hold them to their oaths.



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